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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,586	10/29/2001	Edwin E. Suer	5788-01001	4694

7590 04/27/2004

DINNIN & DUNN PC  
2701 CAMBRIDGE CT  
SUITE 500  
AUBURN HILLS, MI 48326-2510

EXAMINER

ALIE, GHASSEM

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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Dinnin & Dunn, P.C.  
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755 West Big Beaver Road  
Troy, MI 48084

EXAMINER

ALIE, GHASSEM

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DATE MAILED: 10/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/047,586

Applicant(s)

SUER ET AL.

Examiner

Ghassem Alie

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

1. Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding Claims 13 and 14, they fail to clearly define the terms “ blades fixed within said interior” and “a fixed plurality of blade” in claim 13, line 5 and claim 14, line 2. It is not clear how the blades can be fixed to the interior of the elongated hollow body and slide up and down during the slicing operation. It is also not clear what a “fixed plurality of blades” means. Are the blades fixed to the elongated hollow body? If so, how do the blade rack slide within the grooves.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 8-12, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gagliardi, Jr. (5,771,771), hereinafter Gagliardi. Regarding claim 1, Gagliardi teaches a utensil 10 having an elongated hollow body 14, which is supporting an elongated food item 12. Gagliardi also teaches that the elongated hollow body 14 includes an inner wall 20, and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a diameter, and a length greater than the diameter. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls

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for cutting a food item 12. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

Regarding claim 2, Gagliardi teaches everything noted above including a hollow body 14 having an inner wall 20 and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a cross-sectional area, and a length greater than the cross-sectional area. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

Regarding claim 3, Gagliardi teaches everything noted above including plurality of grooves 30 extending from the first end 24 to the corresponding plurality of points approaching the second end 26 and a blade rack 32 slidably engaged with outer wall 22 for attachment of the plurality of blades 38 wherein each of the blades 38 corresponding through one of the plurality of grooves 30. See Figs. 1-5 in Gagliardi.

Regarding claim 4, Gagliardi teaches everything noted above including a base 42, which is fixed to the second end 26. See Figs. 1-5 in Gagliardi.

Regarding claim 8, Gagliardi teaches everything noted above including that each of the plurality of the plurality of grooves 30 are equidistantly positioned with respect to each other between the first end 24 and the second end 26. See Figs. 1-5 in Gagliardi.

Regarding claims 9 and 10, Gagliardi teaches everything noted above including that the plurality of the blades 38 is fixed to the inner wall 20 and the open first end 24. See Figs. 1-5 in Gagliardi.

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Regarding claims 11, 12 and 15-17, Garliardi teaches everything noted above including a closed second end 26 and an elongated cylindrical food item 12. Garliardi also teaches that the cylindrical food item 12 is placed within the elongated hollow body 14 of the utensil 10 and the food item 12 is cut by the downward movement of the plurality of blades 38 through the polarity of the grooves 30 which are located along the length of the hollow body 14. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garliardi in view of Priore (3,060,838). Regarding claim 5, Gagliardi teaches everything noted above including the plurality of blades 38 and blade rack 32. Gagliardi does not expressly that the blades includes a plurality of wires wrapped about the blade rack. However, the use of wire blades for slicing a food item is well known in the art such as taught by Priore. Priore teaches wire blades 40a and regular blades 40 wrapped about a blade rack 30 for slicing a food item 41. See Figs. 1-3 and col. 2, lines 12-51 in Priore. The regular blade and the wire blade in cutting a food item function the same as Priore also teaches that both kinds of blades are used for cutting a food item. Therefore, It would have been obvious to a person of ordinary skill in

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the art to provide Grialardi's utensil with the wire blades as taught by Priore since the wire blades function the same as the regular blades in cutting a food item.

6. Claims 6, 7, 13, and 14, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Grialardi in view of Berler (4,250,771). Regarding claims 6, 7, 13, and 14, Grialardi teaches everything noted above including that the blades 38 are fixed to the handle 32, 50 which slide within the grooves 30 of the elongated hollow body 14. See Figs. 1-5 in Grialardi. Grialardi does not teach a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Grialardi's utensil with the food receptacle as taught by Berler in order to facilitate the slicing of the food by holding tighter the food item while the food item is being sliced.

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Hearly (5,520,105), Yawman (5,662,033), Howman et al. (2003/0079350), D'Ambro et al. (4,569,280), Chiodo (6,451,262), and Aguerrevere et al. (5,271,317) teach a food utensil including an elongated hollow body for supporting an elongated food product.

Gagliardi Jr. (5,069,914), Fleetham (6,187,361), Langley (2,509,190), and Pesce (2,675,580) teach hot dog knife having wire blades.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (703) 305-4981.


The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (703) 305-1082. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

GA/ga

October 23, 2003

  
Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700